

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 1031 EQUITY EXCHANGE, LLC, et
6 al.,

7 Plaintiffs,

8 v.

9 SUPERIOR HOMES, LLC, et al.,

10 Defendants.

CASE NO. C17-5213 BHS

ORDER DISMISSING
COMPLAINT FOR LACK OF
JURISDICTION

11 This matter comes before the Court on Defendants Superior Homes, LLC
12 (“Superior”) and Estela Mata’s (“Defendants”) motion to dismiss (Dkt. 12) and the
13 Court’s order to show cause (Dkt. 19). The Court has considered the pleadings filed in
14 support of and in opposition to the motion, Defendants’ response to the order to show
15 cause, and the remainder of the file and hereby dismisses the complaint for lack of
16 jurisdiction.

17 **I. PROCEDURAL HISTORY**

18 On March 22, 2017, Plaintiffs 1031 Equity Exchange, LLC (“1031EE”) and Kauai
19 Ocean View Professional Building, LLC (“Kauai Ocean”) (collectively “Plaintiffs”) filed
20 a complaint against Defendants asserting diversity jurisdiction and numerous causes of
21 action based on violations of state law. Dkt. 1.

22 On May 1, 2017, Defendants filed a motion to dismiss arguing that the Court
should (1) abstain because of a prior action in Hawaii, (2) dismiss because neither

1 plaintiff is a real party in interest, or (3) dismiss because joinder of the real party in
2 interest would defeat jurisdiction. Dkt. 12. On May 22, 2017, Plaintiffs responded. Dkt.
3 15. On May 23, 2017, Defendants replied and argued for the first time that there is not
4 complete diversity. Dkt. 18.

5 On June 13, 2017, the Court issued an order to show cause regarding an apparent
6 lack of diversity between the parties. Dkt. 19. On June 16, 2016, Defendants responded
7 and agreed with the Court. Dkt. 20. Plaintiffs failed to respond.

8 II. DISCUSSION

9 “If the court determines at any time that it lacks subject matter jurisdiction, the
10 court *must* dismiss the action.” Fed. R. Civ. P. 12(h)(3) (emphasis added). *See also Snell*
11 *v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (“Federal Rule of Civil Procedure
12 12(h)(3) provides that a court may raise the question of subject matter jurisdiction, *sua*
13 *sponte*, at any time during the pendency of the action . . .”). Although Defendants
14 improperly raised the issue of diversity jurisdiction for the first time in the reply, the
15 Court must confirm it has jurisdiction before reaching the merits of the dispute. *See*
16 *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380
17 (9th Cir. 1988). As the parties invoking federal jurisdiction, Plaintiffs bear the burden of
18 establishing its existence. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

19 District courts have diversity jurisdiction when the parties are citizens of different
20 states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28
21 U.S.C. § 1332(a)(1). “Diversity jurisdiction requires complete diversity between the
22 parties—each defendant must be a citizen of a different state from each plaintiff.” *In re*

1 *Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1234 (9th Cir. 2008). “In cases where
2 entities rather than individuals are litigants, diversity jurisdiction depends on the form of
3 the entity.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
4 2006). “[A]n LLC is a citizen of every state of which its owners/members are citizens.”
5 *Id.* Thus, if an individual defendant is an owner or member of a plaintiff LLC “then
6 diversity requirement of section 1332 cannot be satisfied.” *Skaaning v. Superior*, CV 09-
7 00364 DAE-KSC, 2009 WL 3763056, at *3 (D. Haw. Nov. 10, 2009).

8 In this case, Plaintiffs have failed to show complete diversity between the parties.
9 Defendants assert, and Plaintiffs fail to show otherwise, that a member of 1031EE, Frank
10 Sarabia, is a citizen of California, which would result in 1031EE being a citizen of
11 California. *Johnson*, 437 F.3d at 899. Plaintiffs allege that Superior is a California
12 company. Dkt. 1, ¶¶ 2.3–2.4. Thus, a plaintiff and a defendant are both citizens of the
13 state of California, and the parties lack complete diversity of citizenship.

14 III. ORDER

15 Therefore, it is hereby **ORDERED** that Plaintiffs’ complaint is **DISMISSED**
16 **without prejudice** for lack of jurisdiction.

17 Dated this 19th day of June, 2017.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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